



TITLE 22

EMERGENCY REGULATIONS

NOTIFICATION REQUIREMENTS FOR MANUFACTURERS OF COVERED ELECTRONIC DEVICES

Department Reference Number: R-2005-06
Office of Administrative Law Emergency Number:

FINDING OF EMERGENCY

Health and Safety Code section 25214.10.2 grants authority to the Department of Toxic Substances Control (DTSC) to adopt emergency regulations for implementation of the Electronic Waste Recycling Act of 2003 and amendment [(Stats. 2003, ch. 526 (SB 20) and Stats. 2004, ch. 863 (SB 50)]. According to that section, “adoption of these regulations is necessary for the immediate preservation of the public peace, health and safety, and general welfare.”

AUTHORITY AND REFERENCE

Health and Safety Code section 25214.9. This section grants DTSC authority to administer the Electronic Waste Recycling Act of 2003, as amended (Pub. Resources Code, div. 30, pt. 3, ch. 8.5, commencing with sec. 42460) (Electronic Waste Recycling Act), in its entirety.

Health and Safety Code section 25214.10.1. Subdivision (c) of Health and Safety Code section 25214.10.1 requires a manufacturer of a covered electronic device to notify its retailers that the device is subject to the Electronic Waste Recycling Act and is subject to recycling fees pursuant to subdivision (d). The proposed regulatory action implements, interprets, and makes specific Health and Safety Code section 25214.10.1, subdivisions (c) and (d).

Health and Safety Code section 25214.10.2. This section grants DTSC authority to adopt emergency regulations for implementation of article 6 of chapter 6.5 of division 20 of the Health and Safety Code (commencing with sec. 25214.9) that remain in effect for a period of two years.

Public Resources Code section 42464. The proposed regulatory action implements, interprets and makes specific Public Resources Code section 42464's requirements for payment and collection of recycling fees.

Public Resources Code section 42475. This section grants DTSC the authority to adopt regulations that are necessary for implementation of Public Resources Code, division 30, part 3, chapter 8.5.

Public Resources Code section 42475.2. This section grants DTSC authority to adopt emergency regulations for implementation of Public Resources Code, division 30, part 3, chapter 8.5, similar to the authority granted to DTSC under Health and Safety Code section 25214.10.2.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Existing Law

In recently enacted legislation [stats. 2004, ch. 863 (SB 50)], Health and Safety Code section 25214.10.1, subdivision (b), requires DTSC to adopt regulations that identify electronic devices that DTSC determines are presumed to be a hazardous waste when discarded. Under current State law, an electronic device that is listed in California Code of Regulations, title 22, chapter 11, Appendix X, subsection (c) (Appendix X), is presumed to be hazardous waste when discarded. Additionally, pursuant to California Code of Regulations, title 22, section 66260.201, subsection (a), each such device must be managed as a “covered electronic device” pursuant to the Electronic Waste Recycling Act of 2003 unless its manufacturer has obtained DTSC’s concurrence that it is non-hazardous. Among other things, the Electronic Waste Recycling Act requires a retailer to collect a recycling fee upon sale of a covered electronic device to a consumer.

To facilitate the collection of required fees, Health and Safety Code section 25214.10.1, subdivision (c), requires a manufacturer to provide annual notification to retailers by April 1 of each year. The notification must identify any electronic device manufactured by that manufacturer that is included in Appendix X on or before December 31 of the prior year and inform retailers that the device is a covered electronic device and is subject to Electronic Waste Recycling Act fees. California Code of Regulations, title 22, section 66260.201, subsection (b)(1) was recently amended through emergency regulation (OAL File No. 04-1216-03-E) to implement, interpret and make specific this statutory notification requirement.

In the event a manufacturer fails to include a specific covered electronic device in the annual notice as required, or if the manufacturer did not previously provide an annual notice, California Code of Regulations, title 22, section 66260.201, subsection (b)(1) requires the manufacturer to send a supplemental notice to each retailer at least ten days prior to distributing that covered electronic device. The intent of the supplemental notice is to ensure that all retailers are informed of all of a manufacturer’s covered electronic devices in order that recycling fees can be collected upon sale of the devices. Without a supplementary notice requirement, there could well be many cases in which retailers are legally obliged to collect the fee but have not been notified that the device they are selling is subject to the fee. Thus, requiring the supplementary notice implements, interprets, and makes specific the Electronic Waste Recycling Act’s requirement that all retailers collect fees on all covered electronic devices that they sell.

California Code of Regulations, title 22, section 66260.201, subsection (b)(2) identifies the information that the manufacturer is required to include in the annual and supplemental notices. The purpose of subsection (b)(2) is to facilitate a retailer's recognition of a manufacturer's covered electronic devices. Consequently, subsection (b)(2) implements, interprets, and makes specific the Electronic Waste Recycling Act's requirement that retailers collect fees upon the sale of all covered electronic devices to consumers.

The proposed regulations remove the ten-day condition in the supplemental notice and clarify that compliance with the supplemental notice does not excuse noncompliance with the annual notice requirement. The proposed regulations also broaden the allowable content of the annual and supplemental notices.

Current federal law contains no special management standards for manufacturers of electronic devices.

Policy Statement Overview

Many discarded electronic devices are hazardous wastes in California under the State's existing criteria. They contain lead and other regulated toxic substances and can pose potential harm to the environment when they are placed in municipal landfills. Electronic waste recovered for recycling can pose a significant threat to public health, worker safety, and the environment if not properly managed.

Statutes 2003, chapter 526 (SB 20) enacted the Electronic Waste Recycling Act of 2003 (ch. 8.5 of pt. 3 of div. 30 of the Pub. Resources Code, commencing with sec. 42460). SB 20 established an aggressive schedule for dealing with electronic wastes. Specifically, the State Legislature's goals in implementing the Electronic Waste Recycling Act include providing safe, cost-free, and convenient collection and recycling of 100 percent of the covered electronic waste discarded or offered for recycling in the state and eliminating electronic waste stockpiles and legacy devices by December 31, 2007 [Pub. Resources Code, sec. 42461, subd. (h)]. The primary tool for achieving these goals is the consumer-funded collection and recycling program established by SB 20 and refined by SB 50. A prerequisite for the application of this program to an electronic device is the identification of the electronic device as a covered electronic device. The State Legislature intends that the program be funded by fees to be collected by retailers upon sale of covered electronic devices and has made electronics manufacturers responsible for notifying retailers of their products to which the fees attach. Thus, manufacturer notifications play a key role in ensuring adequate funding for the program.

SB 50 establishes the requirement for manufacturers to notify retailers, by April 1 of each year, of any electronic device manufactured by that manufacturer that is identified in the DTSC regulations adopted by DTSC on or before December 31 of the prior year. SB 20 (Health & Saf. Code, sec. 25214.9 and Pub. Resources Code, sec. 42475) authorizes DTSC to establish supplemental notification requirements that are necessary

to provide for the collection of required fees. California Code of Regulations, title 22, section 66260.201, subsection (b)(1) currently includes a supplemental notification provision that obligates a manufacturer to notify retailers of its covered electronic devices that the manufacturer otherwise failed to include in the annual notice to retailers, and of additional covered electronic devices that are distributed after the annual notice. Requiring such supplemental notices ensures that each electronic device that falls within the universe of covered electronic devices defined in Health and Safety Code section 25214.10.1, subdivision (c), will be identified to all retailers, who will then collect the fees imposed by Public Resources Code section 42464, as required by Health and Safety Code section 25214.10.1, subdivision (d). As a result, fees from sales of these devices in California will contribute to the funding source for the proper management of discarded covered electronic devices and will provide an incentive for the proper management of these devices; thereby furthering the State Legislature's goals stated above.

Proposed Regulations

California Code of Regulations, title 22, section 66260.201, subsection (b)(1) currently requires that supplemental notifications be made at least ten days prior to the manufacturer distributing the covered electronic devices to the retailer. The proposed regulations reformat and modify the notification requirements to delete the 10 day condition from the supplemental notice provision. Additionally, the proposed regulations broaden the allowable contents of the annual and supplemental notices to include, in lieu of model numbers, other identifying information for covered electronic devices. The proposed regulations also clarify that the covered electronic device screen size that is to be identified in any annual or supplemental notice is to be based on the "viewable" screen size of the device. These changes are necessary to provide manufacturers with a clear set of notification requirements that facilitate compliance using existing business practices.

STATEMENT OF FACTS SUPPORTING FINDING OF EMERGENCY

DTSC finds this rulemaking an emergency as a matter of law pursuant to Health and Safety Code section 25214.10.2 and Public Resources Code section 42475.2, each of which states "adoption of these regulations is an emergency, and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare."

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt under CEQA. A draft of the Notice of Exemption (NOE) is available for review with the rulemaking file and the NOE will be filed with the State Clearinghouse when the regulations are adopted.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other non-discretionary costs or savings to local agencies. These regulations only modify the required content and timing of notifications that manufacturers are required to provide to retailers of covered electronic devices under existing regulations. Local agencies, as with all other businesses and persons, are currently required to pay a small fee at the purchase of any covered electronic device.

Cost or Savings to Any State Agency: DTSC has made a preliminary determination that the proposed regulations will have no significant impact on State revenue or costs. These regulations only modify the required content and timing of notifications that manufacturers are required to provide to retailers of covered electronic devices under existing regulations. State agencies, as with all other businesses and persons, are currently required to pay a small fee at the purchase of any covered electronic device.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.